

922 KAR 1:480. Appeal of child abuse and neglect investigative findings.

RELATES TO: KRS Chapter 13B, 13B.010(2), (7), 23A.010, 194A.005(1), 600.020(1), (7), 620.050(5), 45 C.F.R. 205.10, 42 U.S.C. 1320d-1320d-9, 1397-1397e, 5106a

STATUTORY AUTHORITY: KRS 194A.050(1), 42 U.S.C. 5106a

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds. 42 U.S.C. 5106a requires the Secretary of Health and Human Services to make grants for the purpose of assisting states in improving the delivery of child protective services, including procedures for appealing and responding to appeals of substantiated reports of abuse and neglect. In order to maintain continued eligibility after the initial grant application, 42 U.S.C. 5106a requires states to submit a plan every five (5) years thereafter assuring operation of a statewide program related to child abuse and neglect that includes provisions, procedures, and mechanisms by which a perpetrator who disagrees with an official finding of child abuse or neglect may appeal the finding. This administrative regulation establishes the cabinet's procedures for responding to appeals of child abuse and neglect investigative findings.

Section 1. Definitions. (1) "Abused or neglected child" is defined by KRS 600.020(1).

(2) "Administrative hearing" is defined by KRS 13B.010(2).

(3) "Appellant" means a perpetrator who requests an administrative hearing or on whose behalf an administrative hearing is requested by the perpetrator's legal representative.

(4) "Cabinet" is defined by KRS 194A.005(1) and 600.020(7).

(5) "Compelling need" means a hearing officer determines that a probability exists by which a child would be unable to reasonably communicate because of emotional distress produced by the perpetrator's presence.

(6) "Good cause" means justification for failure to carry forward with a legal obligation related to an appeal, including:

(a) An appellant's inability to comprehend the cabinet's written statement describing appeal rights; or

(b) A cabinet-sanctioned determination that the appellant or the appellant's legal representative is not at fault for failure to:

1. Submit a written request for appeal; or

2. Participate in a proceeding related to an administrative hearing.

(7) "Hearing officer" is defined by KRS 13B.010(7).

(8) "Perpetrator" means a person who, as a result of an investigation, has been determined by the cabinet to have abused or neglected a child.

Section 2. Right to Appeal. A person who has been found by the cabinet to have abused or neglected a child may appeal the cabinet's investigative finding through an administrative hearing.

Section 3. Notification and Request for Appeal. (1) The cabinet shall provide to a perpetrator:

(a) Notice of a substantiated finding of child abuse or neglect in accordance with 922 KAR 1:330, Section 10; and

(b) A copy of the DPP-155, Request for Appeal of Child Abuse or Neglect Investigative Finding.

(2) The cabinet shall disclose confidential information in accordance with 42 U.S.C.

5106a(b)(2)(B)(viii), (ix) to any federal, state, or local government entity, or an agent of a government entity, that has a need for the information in order to carry out its responsibility under the law to protect children from abuse and neglect.

(3) A request for appeal shall:

(a) Be submitted:

1. In writing by the appellant, with the assistance of the cabinet if the appellant is unable to comply without assistance; and

2. To the cabinet no later than thirty (30) calendar days from the date the notice of a substantiated finding of child abuse or neglect is postmarked;

(b) Describe the nature of the investigative finding;

(c) Specify the reason the appellant disputes the cabinet's substantiated finding of child abuse or neglect;

(d) Specify the name of each known cabinet staff person involved with the investigation; and

(e) Include a copy of the notice of a substantiated finding of child abuse or neglect if available.

(4)(a) Upon receipt of a written request for appeal, the cabinet shall confirm whether the matter is subject to review through an administrative hearing.

(b) If the matter is not subject to review, the cabinet shall inform the individual in writing that the matter:

1. Is not appealable; and

2. May be pursued through the service complaint process established by 922 KAR 1:320, Section 4 or 10.

(5) The cabinet shall not dismiss a request for appeal as untimely if an appellant demonstrates good cause.

Section 4. Matters Not Appealable Through an Administrative Hearing. (1) The following shall not be subject to review through an administrative hearing:

(a) A matter in which a civil court having competent jurisdiction:

1. Has heard evidence and made a final judicial determination that abuse or neglect of a child did or did not occur; or

2. Is currently engaged in legal proceedings regarding the same issue being appealed;

(b) A matter in which an appellant has been criminally charged and convicted of an action that is the basis of the cabinet's finding of abuse or neglect of a child;

(c) A final administrative decision made by the cabinet or cabinet's designee as a result of a previous appeal on the same issue;

(d) An appeal that has been abandoned by an appellant who failed to demonstrate good cause for failure to go forward;

(e) Failure to submit a written request for appeal within the time frame established by Section 3(3)(a) of this administrative regulation, unless an appellant demonstrates good cause; or

(f) An investigation that results in an unsubstantiated finding of abuse or neglect of a child.

(2) If an appellant is denied an administrative hearing in accordance with subsection (1)(a) of this section, the cabinet shall change its investigative finding:

(a) In accordance with a civil court's finding regarding abuse or neglect; or

(b) To a services needed finding in accordance with 922 KAR 1:330 and 42 U.S.C. 5106a(b)(2)(B)(v).

Section 5. Investigative Findings. (1) The cabinet shall reserve the right, in its sole discretion, to amend, modify, or reverse its investigative finding of child abuse or neglect at any time based upon:

- (a) A review of the cabinet's records; or
- (b) Subsequent discovery of additional information.
- (2) If amendment, modification, or reversal of an investigative finding results in a substantiated finding of abuse or neglect of a child, the cabinet shall act in accordance with:
 - (a) Section 3(1) and (2) of this administrative regulation; and
 - (b) 922 KAR 1:330, Section 10(8).

Section 6. Administrative Hearing. (1) Each administrative hearing conducted by the cabinet or its designee shall be held in accordance with KRS Chapter 13B.

(2) The proceedings of an administrative hearing shall be disclosed only in accordance with KRS 194A.060, 620.050, 42 U.S.C. 1320d-1320d-9, 42 U.S.C. 1397-1397e, 42 U.S.C. 5106a, 920 KAR 1:060, 922 KAR 1:470, and 922 KAR 1:510.

(3)(a) A hearing officer may, upon a determination of compelling need, permit a child to provide testimony in a manner in which the child is not able to hear or see the appellant.

(b) At the discretion of the child, the child's parent, or the child's legal guardian, a child required to testify in an administrative hearing may be accompanied by an adult who serves in a therapeutic or supportive capacity to the child.

(4) If a hearing officer orders the testimony of a child to be taken in accordance with subsection (3) of this section, the hearing officer shall permit the appellant to hear the testimony of the child.

Section 7. Recommended Order. (1) A copy of the recommended order shall be sent simultaneously to:

- (a) Each party to the administrative hearing;
- (b) The commissioner of the Department for Community Based Services; and
- (c) The secretary of the Cabinet for Health and Family Services or designee.
- (2) If a party to a hearing disagrees with the recommended order, the party may file a written exception as provided in KRS 13B.110(4) with the secretary, which shall:
 - (a) Be filed within fifteen (15) calendar days of the date the recommended order was mailed;
 - (b) Be based on facts and evidence presented at the hearing;
 - (c) Not refer to evidence that was not introduced at the hearing; and
 - (d) Be sent to each other party involved in the hearing.

Section 8. Final Order. (1) The secretary of the Cabinet for Health and Family Services or designee shall issue a final order in accordance with KRS 13B.120.

(2)(a) Final administrative action shall be taken, unless waived by an appellant, within ninety (90) calendar days from the date of the request for an administrative hearing as required by 45 C.F.R. 205.10.

(b) If the appellant waives the ninety (90) calendar day requirement specified in paragraph (a) of this subsection, the hearing officer shall notify all parties to the hearing when final administrative action will be taken.

(3) An aggrieved party may petition for judicial review in accordance with:

- (a) KRS 13B.140 to 13B.160; or
- (b) KRS 23A.010.

Section 9. Incorporation by Reference. (1) "DPP-155, Request for Appeal of Child Abuse or Neglect Investigative Finding", 6/2019, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky

40621, Monday through Friday, 8 a.m. to 4:30 p.m. (30 Ky.R. 1718; 2485; eff. 6-16-2004; TAm eff. 10-27-2004; TAm eff. 1-27-2006; 40 Ky.R. 2382; 41 Ky.R. 81; eff. 9-5-2014; 44 Ky.R. 436, 1079; eff. 1-5-2018; TAm eff. 5-29-2019.)